

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO:

02-21594

CREATIVE CHOICE HOMES, II, LTD.,


Plaintiff,

v.

BANKERS INSURANCE COMPANY, and
BROWN & BROWN, INC.

Defendants.

CIV-MOORE
MAGISTRATE JUDGE
O'SULLIVAN

FILED BY 
02 MAY 29 PM 3:55
CLERK U.S. DIST. CT.
S.D. OF FLA. - WPB

COMPLAINT

The Plaintiff, CREATIVE CHOICE HOMES II, LTD., sues the Defendants, BANKERS INSURANCE COMPANY, and BROWN & BROWN, INC., and alleges:

COUNT I
(BANKERS INSURANCE COMPANY)

1. This is an action for damages that exceed the sum of \$75,000, and this court has jurisdiction pursuant to 42 U.S.C. §4072.
2. The plaintiff is a Florida Limited Partnership with its principal place of business in Palm Beach County, Florida.
3. At all times material, the plaintiff has owned real property and buildings located thereon at Opa-Locka Florida, commonly known as the Gardens Apartments ("the property") as follows:

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<u>ADDRESS</u>	<u>POLICY NUMBER</u>
13132-13140 Port Said Road	09 0007663669
13122-13130 Port Said Road	09 0007663670
13142 Port Said Road	09 0007663671
13436-13450 Aswan Road	09 0007663672
13002-13110 Alexandria Drive	09 0007663673
13112-13120 Alexandria Drive	09 0007663674
13144 Port Said Road	09 0007663675
13412-13424 Aswan Road	09 0007663676

4. At all times material, Defendant, BANKERS INSURANCE COMPANY (“Bankers”) was a foreign insurance company authorized to do and doing business in the State of Florida and issued the policies of insurance alleged below to the plaintiff.

5. Commencing on or about January 5, 2000, and through January 5, 2001, Defendant BANKERS issued to plaintiff its insurance policies, providing water, hurricane, and flood insurance for the property, as evidence by the sample Declaration Sheets attached. Copies of the full policies are not attached because of their bulk, but defendant Bankers has copies thereof.

6. At all times material, and continuously from January 5, 2000, through January 5, 2001, the Plaintiff made all required premium payments for the insurance policies issued by BANKERS, referenced above.

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7. On or about October 4, 2000, the property and the buildings thereon suffered water and flood damage.

8. Thereafter, plaintiff submitted claims under the BANKERS' insurance policies for the foregoing damages. However, Defendant, BANKERS, has breached its obligation under the foregoing policies by failing to pay the full amount of the damages claimed and due.

9. Plaintiff has complied with all conditions precedent under the subject insurance policies and under the regulations of National Flood Insurance Program, or those conditions have been waived by Defendant BANKERS, or the United States Government.

10. As a result of the improper adjustment and payment of the claims submitted by plaintiff, plaintiff has been damaged by not receiving insurance coverage/payments in the amount of \$250,000 per building, or a total of \$2,000,000 setting off the amount already paid of \$383,768.55, for total principal damages of \$1,616,231.50.

WHEREFORE, plaintiff demands judgment for damages and court costs against Defendant, BANKERS INSURANCE COMPANY.

COUNT II
(BROWN & BROWN, INC.)

11. Plaintiff realleges and incorporates paragraphs 1,2,3, and 5.

12. At all times material, Defendant, BROWN & BROWN, INC., conducted business in Palm Beach County, Florida as an insurance agent and consultant by advising Plaintiff on its insurance needs in Palm Beach County, Florida, including the proper amount, type, and number of flood insurance policies for the Plaintiff's property.

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13. At all times material, Defendant, BROWN & BROWN, INC., negligently advised or represented to Plaintiff or led Plaintiff to believe that plaintiff was appropriately insured for each of the buildings on its property.

14. At all times material, and continuously from January 5, 2000, through January 5, 2001, the Plaintiff made all required premium payments for the insurance policies issued by BANKERS, referenced above.

15. On or about October 4, 2000, the property and the buildings thereon suffered water and flood damage.

16. As a result of Defendant's, BROWN & BROWN, INC., negligence, BANKERS claims that the policies insured only one (1) wing of certain covered buildings, instead of the entire building at each location. Defendant, BROWN & BROWN, INC., knew or should have known by virtue of their claimed expertise as insurance agents, that under National Flood Insurance Program ("NFIP") regulations and claims manuals, the subject buildings on plaintiff's property could possibly be construed by BANKERS and its adjusters as consisting of more than one (1) building at each location rather than one (1) building at each location.

17. As a result of BROWN & BROWN's negligence, Plaintiff has been damaged by not receiving insurance coverage/payments in the amount of \$250,000 per building, for no less than \$500,000 setting off the amount already paid by BANKERS.

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WHEREFORE, Plaintiff demands judgment for damages, interest, and costs against
Defendant, BROWN & BROWN, INC.

Dated MAY 29, 2002.

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West Palm Beach, FL 33401
Attorneys for Plaintiff
(561) 471-9600

BY: K R
Kevin F. Richardson (329185)
and

PETER M. COMMETTE, P.A.
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(954) 764-0005

BY: K R, for
Peter M. Commette (350133)

IS 44
Rev. 12/96)

CIVIL COVER SHEET

02-21594

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

CREATIVE CHOICE HOMES, II, LTD.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Palm Beach
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

BANKERS INSURANCE COMPANY and
BROWN AND BROWN, INC.

MAGISTRATE JUDGE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Palm Beach
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Clyatt and Richardson, P.A., 1551
Forum Place, Suite 300E, West Palm Beach, FL 33401

ATTORNEYS (IF KNOWN)

S.D. CLERK
02 MAY 2003
10 31(d) CIRCLE COUNTY WHERE ACTION AROSE DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 6
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT

- ☒ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability

A TORTS

PERSONAL INJURY

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY -

- ☐ 362 Personal Injury - Med Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

A BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

A PROPERTY RIGHTS

- ☐ 620 Copyrights
☐ 630 Patent
☐ 640 Trademark

A OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Selective Service
☐ 490 Securities/Commodities/Exchange
☐ 475 Customer Challenge 12 USC 3410
☐ 481 Agricultural Acts
☐ 482 Economic Stabilization Act
☐ 483 Environmental Matters
☐ 484 Energy Allocation Act
☐ 485 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes
☐ 990 Other Statutory Actions
A OR B

A REAL PROPERTY

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

A CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 440 Other Civil Rights

PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence
☐ HABEAS CORPUS:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

A LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt Relations
☐ 730 Labor/Mgmt Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

B SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/OIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7809

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

LENGTH OF TRIAL 42 U.S.C. 4072. Action of flood insurance policy.
via 42 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$1,616,231.50

CHECK YES only if demanded in complaint.
JURY DEMAND: ☐ YES ☒ NOVIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

8/29/02

SIGNATURE OF ATTORNEY OF RECORD

Kevin F. Richardson, Esq. ((329185))

FOR OFFICE USE ONLY

RECEIPT #

716398

AMOUNT

\$150.00

APPLYING IFP

JUDGE

MOORE

MAG. JUDGE

O'Sullivan